
In the Matter of: :
 :
 William L. Roberts, Jr. : HUDBCA No. 02-C-CH-CC050
 : Claim No. 7-70941000
 :
 Petitioner :
 :

William L. Roberts, Jr. Pro se
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DECISION AND ORDER ON RECONSIDERATION

A Decision and Order issued in the above-captioned matter on June 12, 2003, found that the debt which is the subject of this proceeding was "legally enforceable against Petitioner in the amount of \$20,665.45 plus interest on the principal balance of \$12,850.24 from May 30, 2002, at 5.00% per annum until paid." (Decision and Order, dated June 12, 2003). Petitioners' timely request for reconsideration was denied. The Secretary's request for reconsideration was taken under advisement pending further proceedings

subsequently ordered by the Board. The Board now grants the Secretary's request, and bases this reconsideration of that Decision and Order on the entire record of this matter, including a letter from Petitioner and two Supplemental Secretary's Statements received subsequent to the issuance of the June 12, 2003, Decision and Order.

Discussion

On reconsideration, the Secretary seeks to "substantiate certain fees and costs" added to the total debt owed by Petitioner. (Supplemental Secretary's Statement, hereinafter "Supp. Secy. Stat.," dated July 1, 2003). The Secretary requests that the Board find "that the \$10,187.66 amount the [Board] provisionally deducted from the total amount the Secretary alleged due from [Petitioner] is also past due and legally enforceable." Id. The amount deducted from the total amount claimed by the Secretary included \$7,643.66 in private collection agency ("PCA") fees and \$2,545.00 reflecting uncertainty as to whether the "amount reflected on the Claim of Loss Application Voucher for repossession and preservation costs . . . was incorporated in the Total Insured Loss claimed by the assignor." (Decision and Order, dated June 12, 2003).

The Board need not address the issue raised regarding an adjustment to the amount due and legally enforceable representing PCA fees because the Secretary has determined that he "no longer seeks to add the Treasury [DMS or Debt

Management Services] fee of \$917.12, nor the PCA fee of \$7,632.66 to the amount due on this claim." (Supplemental Secretary's Statement, received September 16, 2003, Exh. A, Supplemental Declaration of Lester West). The PCA fee, of \$7,632.66, shall not be added to the total amount due from Petitioner, but this Board finds that the DMS fee was justifiably added to the total sum which the Secretary seeks to recover.

The Secretary's Supplemental Statement requests that the Board grant the original principal amount alleged by the Secretary of \$23,037.90 due and legally enforceable. (Supp. Secy. Stat.). The Board's Decision found that the:

Secretary's submissions [did not] clarify whether a corrected, yet still uncustomarily high, amount reflected on the Claim of Loss Application Voucher for repossession and preservation costs, i.e., a handwritten inscription of \$2,630 correcting a typewritten entry of \$5,175, was incorporated in the Total Insured Loss claimed by the assignor, CIT Groups as Agent for GNMA, it appearing that the difference reflected by this corrected amount was not credited to the Total Insured Loss, thereby improperly inflating the outstanding balance due. (Decision and Order dated June 12, 2003 citing Secretary's Statement, Exh. E, at 23(A)).

In response to the Decision of the Board the Secretary submitted a Claim Calculation Worksheet ("CCW") which

details how the Secretary computed the principal debt amount. (Supplemental Secretary's Statement, received September 16, 2003, Exh. A, Supplemental Declaration of Lester West, Exh. J line 23 A). The CCW shows that in calculating the repossession and preservation costs, the Secretary included the handwritten corrected \$2,630.00 figure rather than the typewritten \$5,175.00 figure in the Total Insured Loss amount. Id. The Board finds that the calculation submitted by Lester West, dated June 23, 2003, correctly calculated the reimbursement for repossession and preservation costs. (Supp. Secy. Stat., Exh. A, Supplemental Declaration of Lester West). Therefore, the \$2,545.00 which was withheld in the Decision shall be restored to the total amount found to be due of \$20,665.45. (Decision and Order, dated June 12, 2003).

The Board raised sua sponte the propriety and legality of a 13.17% rate of annual interest which appears to violate Texas Financial Code § 302.001(b). The burden of proof is on the Secretary to show that the loan to Petitioner is exempt from any state law restrictions on the Secretary's ability to collect interest. Pacific Mortgage and Investment Group, Ltd. v. Hord, 641 A.2d 913 (Md.App. 1994). The Secretary argues that the Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA") pre-empts Texas state law restrictions on the rate of interest that may be charged on a loan. (Supplemental Secretary's Statement, received November 10,

2003). The DIDMCA applies to "any loan, mortgage, or advance" which is insured under Title I or II of the National Housing Act and executed after December 21, 1979. (12 U.S.C. § 1735f-7(a), (b)). The note which is the subject of this proceeding was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act and executed on December 29, 1989. Therefore, it clearly falls within the ambit of the DIDMCA and is exempt from any state law restriction on the Secretary's right to collect sums now due on the defaulted note. (12 U.S.C. 1735f-7 (a), (b)).

ORDER

I find the debt which is the subject of this proceeding to be legally enforceable against Petitioner in the amount of \$23,210.45 plus interest on the principal balance of \$12,850.24 from May 30, 2002, at 5.00% per annum until paid. This principal amount includes the DMS fee and the Repossession and Preservation Costs previously omitted in the Decision and Order of June 12, 2003.

It is hereby ORDERED that the Secretary is authorized to seek collection of this outstanding obligation in this amount by means of administrative offset of any eligible Federal payments due Petitioner.

Judge David T. Anderson
Administrative Judge

February 18, 2004